

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Havens and Sons Trucking  
603 East Main Street  
El Centro, California 92243

EPA ID No. CAL 000188892

Respondent.

Docket HWCA 2005-0798

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and Havens and Sons Trucking (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates and handles hazardous waste at 603 East Main Street, El Centro, California, 92243 (Site).

2. The Department inspected the Site on March 29, 2005.

3. The Department alleges the following violations:

3.1 The Respondent violated Health and Safety Code section 25250.7, in that prior to March 29, 2005, Respondent placed spent solvent mixed with paint into the used oil tank.

3.2 The Respondent violated Health and Safety Code section 25201(a), in that on or about March 29, 2005, Respondent did store hazardous wastes in the following containers: used oil in a 1,000-gallon capacity used oil tank; five, 55-gallon capacity metal drums that contained used oil filters; and two, 250-gallon

capacity totes, one with spent diesel and the other one with spent antifreeze.

3.3 The Respondent violated Health and Safety Code section 25201(a), in that on or about March 29, 2005, Respondent caused the disposal of used oil to the ground in two different areas of the Respondents property.

3.4 The Respondent violated California Code of Regulations, title 22, section 66262.34 (f), in that on or about March 29, 2005, Respondent failed to have:

- a) an accumulation start date on one 1,000-gallon capacity used oil tank;
- b) placed a hazardous waste label on the five, 55-gallon capacity drums containing used oil filters;
- c) placed a hazardous waste label on two, 250-gallon capacity totes that contained spent diesel and spent antifreeze, a regulated hazardous waste.

3.5 The Respondent violated California Code of Regulations, title 22, section 66265.173, in that on or about March 29, 2005, Respondent did not keep the lids closed on:

- a) five, 55-gallon capacity metal drums containing used oil filters;
- b) and two, 250-gallon capacity totes, one with spent diesel and the other one with spent antifreeze, a California-regulated hazardous waste.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondent waives any right to a hearing in this matter.
8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.
9. Respondent does not admit the violations.

#### SCHEDULE FOR COMPLIANCE

- 10.1 Respondent shall comply with the following:
  - 10.1.1. Immediately, Respondent shall not mix spent solvents containing paint with the used oil. In the future the various waste streams shall be stored and disposed of in separate containers following all hazardous waste generators requirements.
  - 10.1.2. Immediately, Respondent shall place hazardous waste labels and complete all sections of the hazardous waste labels once hazardous waste is introduced into the containers.
  - 10.1.3. Within 30-days of effective date of this Order, Respondent shall containerize all used oil spilled to the ground, following all generator requirements. Respondent must hire a company qualified to assess and remediate soil contamination in the two locations sampled in and around the used oil tank. A written report must be submitted to the Department of Toxic Substances Control explaining the findings and recommendations of the assessment.
  - 10.1.4 Respondent shall place the accumulation date on labels affixed onto drums containing hazardous waste. Respondent shall label drums and totes as a

hazardous waste and follow all other applicable generator requirements for hazardous wastes.

10.1.5. Respondent must always have the lids closed on all hazardous waste containers unless adding or removing wastes.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Yvonne Sanchez  
Branch Chief  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

Juan Jimenez, Chief  
San Diego Border Unit  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
9174 Sky Park Court, Suite 150  
San Diego, California 92123

Alan Hsu  
Supervising Hazardous Substances Scientist I  
Certified Unified Program Agency  
Imperial Hazardous Material/Waste Unit  
Department of Toxic Substances Control  
301 Heber Avenue  
Calexico, California 92231

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other

writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as

provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site, at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order.

All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

### PAYMENTS

11.1. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$27,500.00, of which \$15,000.00 is a penalty, \$5,000.00 is a credit for attendance of compliance school and \$7,500.00 is for reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number (Docket HWCA 2005-0798). Respondent shall deliver the penalty payments together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Yvonne Sanchez  
Branch Chief  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

To: Juan Jimenez, Chief  
San Diego Border Unit  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
9174 Sky Park Court, Suite 150  
San Diego, California 92123



To: Alan Hsu  
Supervising Hazardous Substances Scientist I  
Certified Unified Program Agency  
Imperial Hazardous Material/Waste Unit  
Department of Toxic Substances Control  
301 Heber Avenue  
Calexico, California 92231

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11.2. Respondent hereby agrees to send its employees to the specified California Compliance School (Modules I-IV). Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 180-days of the date of this Consent Order. In recognition of this educational investment, the penalty imposed by this Consent Order has been reduced by \$5,000.00 provided that three employees satisfactorily complete the specified modules and the Department receives the Certificates of Satisfactory Completion within 180-days of the effective date of this Consent Order. If the Respondent fails to submit the certificate as required, the penalty of \$5,000.00 is due and payable within 30-days after the 180-day period expires. The 180-day period may be extended by a Department Branch Chief or his designee, upon written request demonstrating good cause from the Respondent.

If Respondent fails to make payment as provided above, Respondent agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all cost incurred by the Department in pursuing collection including attorney' fees.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188, and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: December 8, 2005

Original signed by Lee Havens  
Lee Havens, Owner  
Havens and Sons Trucking  
Respondent

Dated: December 8, 2005

Original signed by Juan Jimenez  
Juan Manuel Jimenez, Chief  
San Diego Border Unit  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control